

## **REMARKS/ARGUMENTS**

Claims 1, 6 and 7 currently are pending. Claims 1, 6 and 7 currently have been amended.  
Claims 2-5 are canceled.

The Examiner rejected claims 1-7 under 35 USC § 102(b) as being anticipated by JP 2003-031371. The Examiner believes this prior art reference discloses an organic electroluminescent element comprising a luminescent layer disclosed between an anode and a cathode on a substrate, and additionally a hole blocking layer on the cathode side of the luminescent layer. The compound discloses the abstract of this reference the Examiner believes is one of the compounds claimed for usage as the hole blocking layer in the present invention.

Anticipation under 35 USC § 102 requires that a single prior art reference discloses each and every element of the claimed invention. *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 66 USPQ 2d 1429 (Fed. Cir. 2003).

Applicants believe the present claims as amended are not anticipated by the Examiner's cited reference JP 2003-031371 as it does not disclose each and every element of these claims. Applicants herein amend claim 1 to include the limitations of now canceled dependent claims 2-5. The reference to the carbazolyl group has been deleted from claim 1. Claims 6 and 7 also delete references to the carbazolyl group.

In view of the foregoing, Applicants submit that the Examiner's anticipation rejection now is moot and respectfully request its withdrawal.

The Examiner rejected claims 1-7 provisionally under 35 USC § 101 as claiming the same invention as that of claims 1 and 7 of copending application 10/779,784. This is a statutory type double patenting rejection.

A reliable test for double patenting under 35 USC § 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d. 438, 164 USPQ 619 (CCPA 1970).

As far as comparing claim 1 of the present application with claim 1 of 10/779,874, it is possible to literally infringe claim 1 of 10/779, 874 without infringing claim 1 of the present application. Claim 1 of the present application does not require that the hole blocking layer be formed of the same substance as that of the third emission area. This is an element of claim 1 of 10/779,874.

In view of the foregoing, Applicants believe that the Examiner issued the double patenting rejection in error and respectfully request withdrawal of this rejection.

### **CONCLUSION**

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance. If the Examiner believes that any additional changes would place the application in better condition for allowance, the Examiner is invited to contact the undersigned attorney at the telephone number listed below.

Serial No. 10/779,875

Docket No. K-0611

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this, concurrent and future replies, including extension of time fees, to Deposit Account 16-0607 and please credit any excess fees to such deposit account.

Respectfully submitted,  
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